

Water & Natural Resource Committee

Update on Soil and Water Conservation District Issues – July 30, 2012

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Watershed Dam Issues

- 60 Dams sponsored/owned by Soil & Water Conservation Districts on this list.
- 19 of the 47 districts are involved with Flood Protection Dams in NM

Districts that sponsor dams include:

Caballo, Carlsbad, Central Valley, Chaves, Ciudad, Colfax, Coronado, East Rio Arriba, Grant, Lava, McKinley, Northeastern, Otero, Quemado, Santa Fe-Pojoaque, Sierra, Tierra Y Montes, Upper Hondo, Ute Creek

- ✚ Development of Emergency Action Plans (EAPs)
- ✚ Liability – Dam failure
- ✚ Maintenance and Rehabilitation- Compliance with Dam Safety Bureau

ISSUE:

Current law allows owners of land to petition the board to have their land withdrawn for the watershed district. This petition then triggers a hearing within 30 days. There is no funding to hold hearings and if land owners are allowed to withdraw from the watershed district built to protect property, there will be no ability to levy taxes for maintenance and operation of the watershed dam.

ISSUE:

Current law allows for twenty-five (25) landowners to petition to request the existence of the watershed district be discontinued. The petition then also requires the district to conduct a referendum which in which there is no funding to conduct. These dams are built to protect life and property and the ability to discontinue a watershed district with just 25 people is very concerning.

SOLUTION: As long as the dams exist the watershed district should exist and the ability to collect a maintenance tax should exist. This can be done by simply repealing 73-20-22 and 73-20-23. If the district is abolished, no matter how difficult, the dams still exist and must be maintained. Someone has to own them and maintain them and the watershed board is the answer. We need some certainty in this process.

ISSUE:

Office of State Engineer Dam Safety Bureau has determined that most of the dams sponsored by the SWCDs are classified in “poor condition” because of the lack of critical design information. OSE needs USDA-NRCS dam related records to complete the OSE records. The PL-566 dams designed by the federal government have their records stored in the federal office around the state. Because the OSE records are incomplete on these dams, they have “uncertainties” with the design assumptions and therefore are being declared in “poor condition”.

WATERSHED DISTRICT ACT- CURRENT LAW

73-20-3. Purpose of act.

The purpose of the Watershed District Act [73-20-1 NMSA 1978] is to secure the federal assistance provided in Public Law 566 of the 83rd congress, and amendatory legislation, for New Mexico in its program to further the conservation, development, utilization, flood prevention and disposal of water, and thereby preserve and protect New Mexico's land and water resources.

History: 1953 Comp., § 45-5-21, enacted by Laws 1957, ch. 210, § 3.

73-20-22. Detaching land.

The owner or owners of land who have not been, are not and cannot be benefited by their inclusion in the watershed district may petition the board of supervisors to have the lands withdrawn. The petitions shall be filed with the board of supervisors and the board of directors and shall describe the lands and state the reasons why they should be withdrawn. A hearing shall be held within thirty days after the petition is received. Due notice of the hearing as provided in Section 73-20-8 NMSA 1978 shall be given at least ten days before the hearing. If it is determined by the board of supervisors that the lands shall be withdrawn, the determination shall be certified to the county clerk of each county in which any portion of the lands lie. After recording, the certification shall be filed with the New Mexico department of agriculture.

History: 1953 Comp., § 45-5-39, enacted by Laws 1957, ch. 210, § 21; 1973, ch. 332, § 9; 1975, ch. 294, § 7; 1977, ch. 254, § 53; 1987, ch. 234, § 76; 2003, ch. 228, § 11.

73-20-23. Discontinuance of districts.

A. At any time after five years from the organization of a watershed district, twenty-five or more landowners within a district or, if less than fifty landowners are involved, a majority of the landowners in the district may file a petition with the board of supervisors and the board of directors requesting that the existence of the district be discontinued. The petition shall state the reasons for discontinuance and that all obligations of the district have been met.

B. After giving notice as defined in Section 73-20-8 NMSA 1978, the board of supervisors may conduct hearings on the petition as may be necessary to assist it in making a determination.

C. Within sixty days after petition is filed, a referendum shall be held under the supervision of the board of supervisors as provided in Section 73-20-14 NMSA 1978. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its result if notice of the referendum has been given substantially as provided in Subsection B of this section.

D. If a majority of the votes cast in the referendum favor the discontinuance of the district and it is found that all obligations have been met, the board of supervisors shall make a determination that the watershed district shall be discontinued. A copy of the determination shall be certified by the clerk of the county involved for recording. After recording, the certification shall be filed with the New Mexico department of agriculture.